

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

WILLIAM MCGURGAN,

Petitioner,

v.

CIVIL ACTION NO. 1:16CV111  
(Judge Keeley)

WARDEN,

Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S  
REPORT AND RECOMMENDATION [DKT. NO. 19]

On June 10, 2016, petitioner William McGurgan ("McGurgan") filed a letter with the Court that was docketed as a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Dkt. No. 1). On July 15, 2016, McGurgan filed his petition on the court-approved form along with an application to proceed without prepayment of fees (Dkt. No. 6; 7). On July 19, 2016, McGurgan paid the five-dollar filing fee (Dkt. No. 8), and his application to proceed without prepayment was denied as moot (Dkt. No. 11).<sup>1</sup>

In a Report and Recommendation ("R&R") dated September 30, 2016, the Honorable Robert W. Trumble, Magistrate Judge, recommended that the petition be dismissed for failure to exhaust state remedies (Dkt. No. 19). Although McGurgan has filed a number of state petitions, those filed with the Supreme Court of Appeals of West Virginia were either dismissed without prejudice or not

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<sup>1</sup> On August 2, 2016, McGurgan noticed appeal concerning the Court's decision to deny this application (Dkt. No. 13).

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docketed. Id. at 4-5. Additionally, McGurgan has not noticed appeal from the dismissal of three habeas petitions by the Circuit Court of Cabell County, West Virginia, on August 15, 2016. Id. at 5.

McGurgan received the R&R on October 5, 2016 (Dkt. No. 20). In the R&R, Magistrate Judge Trumble notified McGurgan of his right to file any objections to the recommendations within fourteen (14) days following his receipt of the R&R. See 28 U.S.C. § 636(b)(1)(C). To date, McGurgan has not filed any objections to the R&R. On the contrary, on October 12, 2016, he filed a "Motion to Dismiss Without Prejudice," acknowledging that he has filed this petition prematurely without exhausting his state remedies (Dkt. No. 21).

This Court is required to review de novo only those portions of the magistrate judge's findings to which objection is made. Id. "[T]he Court may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object." Dellarciro v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Because McGurgan has not filed any objections, and has expressed agreement with the R&R's conclusions, the Court's review of the R&R is for clear error.

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Upon review of the R&R and the record, the Court adopts the opinion of the Magistrate Judge for the reasons discussed in the R&R (Dkt. No. 19). Therefore, the Court:

1. **ADOPTS** the R&R (Dkt. No. 19);
2. **GRANTS** McGurgan's Motion to Dismiss (Dkt. No. 21); and
3. **DISMISSES** this civil action **WITHOUT PREJUDICE** and **ORDERS** that it be **STRICKEN** from the active docket of this Court.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to enter a separate judgment order and to transmit copies of both orders to counsel of record and to the pro se plaintiff by certified mail, return receipt requested.

DATED: October 27, 2016.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE